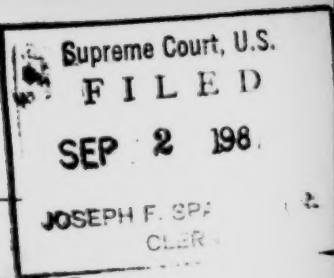


(1)
No. 87-73



IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1987

Katherine B. NICHOLS, etc.,

Petitioners,

v.

Don RYSAVY, et al.,

Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit

PETITIONERS' REPLY BRIEF

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August 1987

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ARGUMENT

IF THE FEE PATENTS ISSUED BY THE
SECRETARY WERE VOID, THE LAND IS STILL
IN TRUST AND STATUTES OF LIMITATION DO
NOT RUN

Both the State of South Dakota and the
United States argue that the question of
whether any statute of limitations bars

these actions is unaffected by the voidness of the fee patents. Relying on United States v. Mottaz, 476 U.S. ___, 106 S.Ct. 2224 (1986), they claim that even if the fee patents were void, the statute of limitations runs (State's Brief in Opposition, p. 27; United States' Brief in Opposition, p. 13 n.6).

In that case, this Court held that an action against the United States to quiet title to allotted land purchased by the United States was barred by the Quiet Title Act, 28 U.S.C. § 2409a. The Eighth Circuit Court of Appeals had held that 28 U.S.C. § 2401(a) "does not bar claims of title to allotments because Ewert is based on the principle that, if the underlying sale of land is void, the concept that a cause of action 'accrues' at some point is inapplicable because the allottee simply retains title all along." Mottaz v. United

States, 753 F.2d 71, 73 (8th Cir. 1985),
rev'd on other grounds, 106 S.Ct. 2224.

The Court of Appeals relied on this Court's
decision in Ewert v. Bluejacket, 259 U.S.
129 (1922).

This Court ruled that the action
against the United States in Mottaz was
barred by the statute of limitations
contained in the Quiet Title Act, 28 U.S.C.
§ 2409a(f). Here, there is no attempt to
quiet title against the United States and
the policy considerations involved in
Mottaz do not apply. The Court then
specifically stated:

We need not reach the question
whether § 2401(a) applies to
claims brought under § 345 of the
General Allotment act, and, if it
does, when a cause of action
begins to run, since we conclude
that respondent cannot use § 345
for a quiet title action against
the Government.

106 S.Ct. at 2231.

Contrary to what the State and the federal government claim, the issue has been specifically reserved and is one for decision in this case. The Court of Appeals was in error to hold otherwise. App. p. 27.

CONCLUSION

This Court should grant certiorari to correct the opinion below.

Respectfully submitted,

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